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4 UNITED STATES DISTRICT COURT
5 DISTRICT OF NEVADA

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7 ABET JUSTICE LLC, et al.,

8 Plaintiff(s),

9 v.

10 FIRST AMERICA TRUSTEE SERVICING
11 SOLUTIONS, LLC, et al.,

12 Defendant(s).

Case No. 2:14-CV-908 JCM (GWF)

ORDER

13
14 Presently before the court is defendants First America Trustee Servicing Solutions, LLC,
15 Residential Credit Solutions, Inc., and defendant/counter-claimant Bank of New York Mellon's
16 ("BONY") motion to expunge plaintiff's *lis pendens*. (ECF No. 186).

17 **I. Facts**

18 Plaintiff initiated this action on June 11, 2014, after purchasing an interest in the property
19 known as 2138 Montana Pine Drive, Henderson, Nevada, APN 178-32-312-010 (the "Property")
20 in a non-judicial HOA lien assessment foreclosure sale. (ECF No. 1). Defendants filed a motion
21 to dismiss on July 7, 2014. (ECF No. 5). Plaintiff filed a notice of *lis pendens* on the Property on
22 July 18, 2014. (ECF No. 8). Defendants filed a motion to expunge plaintiff's *lis pendens* on July
23 21, 2014. (ECF No. 10). Defendants' two motions were denied by the court on August 8, 2014 as
24 a result of the inconsistent application of Nevada Revised Statute Chapter 116 by both state and
25 federal courts. (ECF No. 23, 2:1-22).

26 On September 21, 2017, after several years of litigation, the court granted BONY's motion
27 for default judgment and quieted titled in BONY's favor. (ECF No. 175, 11:18-26). The clerk
28 entered judgment in favor of BONY that same day. (ECF No. 176). Per the order, BONY's lien

1 and interest in the property remained and is superior to any interest held by plaintiff. (ECF No.
2 175). Plaintiff filed a notice of appeal as to the order granting default judgment. (ECF No. 177).

3 Despite the court's quieting title in favor of BONY, plaintiff continues to occupy and enjoy
4 the property. BONY cannot evict the plaintiff, or otherwise exert its ownership rights, because the
5 Property's title remains clouded by the *lis pendens*.

6 II. Discussion

7 BONY requests the court enter an order expunging plaintiff's *lis pendens* (ECF No. 8) and
8 removing it from the property's chain of title. (ECF No. 186). In the instant motion, BONY asserts
9 that expunction of *lis pendens* is appropriate pursuant to NRS § 14.015.

10 "The doctrine of *lis pendens* provides constructive notice to the world that a dispute
11 involving real property is ongoing." *Weddell v. H2O, Inc.*, 271 P.3d 743, 751 (Nev. 2012) (citing
12 Nev. Rev. Stat. § 14.010(3)). "[L]*is pendens* are not appropriate instruments for use in promoting
13 recoveries in actions for personal or money judgments; rather, their office is to prevent the transfer
14 or loss of real property which is the subject of dispute in the action that provides the basis for the
15 *lis pendens*." *Levinson v. District Court*, 857 P.2d 18, 20 (Nev. 1993).

16 Pursuant to §14.015, a party's ability to maintain a *lis pendens* depends upon that party's
17 possible future entitlement to the property. Nev. Rev. Stat. § 14.015. "A party who records the
18 notice of *lis pendens* must establish to the satisfaction of the court either: (a) that the party who
19 recorded the notice is likely to prevail in the action, or (b) that the party who recorded the notice
20 has a fair chance of success on the merits in the action..." *Barnett-Moore v. Fed. Home Loan*
21 *Mortg. Corp.*, 2013 U.S. Dist. LEXIS 10217, at *14-15 (D. Nev. Jan. 25, 2013) (citing Nev. Rev.
22 Stat. § 14.015(3)(a)-(b)).

23 Here, the court quieted title in favor of BONY on September 21, 2017. (ECF No. 176).
24 Thus, plaintiff is not likely to prevail in the action nor does plaintiff have a fair chance of success
25 on the merits. Plaintiff is thus incapable of meeting either standard laid out in § 14.015(3).

26 Pursuant to Federal Rules of Appellate Procedure 8, a party aggrieved by a district court's
27 ruling must move to stay if that party hopes to prevent that judgment from being executed pending
28 appeal. Fed R. App. P. § 8(a)(1)(A)-(C). An appeal does not automatically stay a case, but a party

1 must affirmatively request a stay. Fed. R. Civ. P. 8. Upon request, granting of a stay is still within
2 the discretion of the court.


3 While plaintiff appealed the order entering default judgment in favor of BONY (ECF No.
4 177), plaintiff failed to move to stay. Accordingly, the default judgment quieting title of the
5 property in BONY's favor (ECF No. 176) went into effect. (ECF No. 179).

6 **III. Conclusion**

7 Accordingly,

8 IT IS HEREBY ORDERED, ADJUDGED, and DECREED that defendants' motion to
9 expunge *lis pendens* (ECF No. 186) be, and the same hereby is, GRANTED

10 DATED November 30, 2017.

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UNITED STATES DISTRICT JUDGE